

Office of the Secretary, Interior

§ 4.1386

may use a dispute resolution proceeding, if the parties agree to such proceeding, before the procedures set forth in §§ 4.1383 through 4.1387.

[59 FR 54363, Oct. 28, 1994, as amended at 67 FR 4368, Jan. 30, 2002]

§ 4.1382 Contents of request for review; response to request; amendment of request.

(a) The request for review shall include:

- (1) A copy of the decision of OSM;
- (2) A statement of the alleged errors in the decision and the facts that entitle the person requesting review to administrative relief;
- (3) A statement whether the person requesting review wishes an evidentiary hearing or waives the opportunity for such a hearing;
- (4) A request for specific relief; and
- (5) Any other relevant information.

(b) Within 20 days of service of the request for review in accordance with 43 CFR 4.1109, OSM and all interested parties shall file an answer to the request for review or a motion in response to the request or a statement that no answer or motion will be filed. OSM or any interested party may request an evidentiary hearing even if the person requesting review has waived the opportunity for a hearing.

(c) The person filing the request for review may amend it once as a matter of right before the response in accordance with paragraph (b) of this section is required to be filed. After the period for filing such a response, the person may file a motion for leave to amend the request with the administrative law judge. If the administrative law judge grants a motion for leave to amend, he shall provide OSM and any other party that filed a response in accordance with paragraph (b) not less than 10 days to file an amended response.

§ 4.1383 Hearing.

(a) If a hearing is requested, the administrative law judge shall convene the hearing within 90 days of receipt of responses under § 4.1382(b). The 90-day deadline for convening the hearing may be waived for a definite time by the written agreement of all parties, filed with the administrative law judge, or

may be extended by the administrative law judge, in response to a motion setting forth good cause to do so, if no other party is prejudiced by the extension.

(b) The administrative law judge shall give notice of the hearing at least 10 days in advance of the date of the hearing.

§ 4.1384 Burdens of proof.

(a) OSM shall have the burden of going forward to present a prima facie case of the validity of the decision.

(b) The person filing the request for review shall have the ultimate burden of persuasion by a preponderance of the evidence that the decision is in error.

§ 4.1385 Time for initial decision.

The administrative law judge shall issue an initial decision within 30 days of the date the record of the hearing is closed, or, if no hearing is held, within 30 days of the deadline for filing responses under § 4.1382(b).

§ 4.1386 Petition for temporary relief from decision; appeals from decisions granting or denying temporary relief.

(a) Any party may file a petition for temporary relief from the decision of OSM in conjunction with the filing of the request for review or at any time before an initial decision is issued by the administrative law judge.

(b) The petition for temporary relief shall be filed with the administrative law judge to whom the request for review has been assigned. If none has been assigned, the petition shall be filed with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203 (Telephone 703-235-3800).

(c) The petition for temporary relief shall include:

- (1) A statement of the specific relief requested;
- (2) A detailed statement of why temporary relief should be granted, including:
 - (i) A showing that there is a substantial likelihood that petitioner will prevail on the merits, and
 - (ii) A showing that granting the relief requested will not adversely affect